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5 UNITED STATES DISTRICT COURT  
6 DISTRICT OF NEVADA

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8 CHARLES DEAN VIOX,  
9 v.  
10 NANCY PORTER et al.,

Plaintiff,

11 Defendants.

12 Case No. 3:14-cv-00357-MMD-WGC  
13 ORDER

14 **I. DISCUSSION**

15 On October 20, 2014, this Court entered a screening order deferring a decision  
16 on the application to proceed *in forma pauperis*. (Dkt. no. 8 at 5.) In the screening order,  
17 the Court dismissed the complaint in its entirety with respect to the allegations  
18 challenging Plaintiff's conviction, appeal, and habeas proceedings but granted Plaintiff  
19 leave to amend his complaint with respect to the allegations related to his incarceration  
20 at the Northern Nevada Correctional Center ("NNCC"). (*Id.*) The Court granted Plaintiff  
21 thirty (30) days from the date of that order to file an amended complaint. (*Id.*) The Court  
22 further noted that it would dismiss the case without prejudice if Plaintiff failed to file an  
amended complaint about his conditions of confinement. (*Id.*)

23 On October 29, 2014, Plaintiff filed a notice of appeal as to this Court's screening  
24 order. (Dkt. no. 12.) On November 13, 2014, the Ninth Circuit Court of Appeals  
25 dismissed the appeal for lack of jurisdiction because the screening order was not final or  
26 appealable. (Dkt. no. 15.)

27 On November 21, 2014, this Court entered an order directing Plaintiff to file his  
28 amended complaint within thirty (30) days from the date of that order. (Dkt. no. 17 at 3.)

1 The Court reiterated that if Plaintiff failed to file an amended complaint, the Court would  
2 dismiss the action without prejudice. (*Id.*)

3 On November 26, 2014, Plaintiff filed an interlocutory notice of appeal as to the  
4 Court's screening order. (Dkt. no. 19.) On February 6, 2015, Plaintiff filed a petition for  
5 writ of mandamus with the Ninth Circuit. (Dkt. no. 27.) On March 24, 2015, the Ninth  
6 Circuit denied Plaintiff's petition and denied all other pending motions as moot. (Dkt. no.  
7 28.)

8 During the pendency of the appeals, Plaintiff had filed a motion for appointment  
9 of counsel, a motion for reconsideration, and an urgent motion for reconsideration. (Dkt.  
10 no. 22, 23, 26.) The Court denies the motions for reconsideration. In those motions,  
11 Plaintiff reargues the allegations challenging Plaintiff's conviction, appeal, and habeas  
12 proceedings. (See dkt. no. 23, 26). As explained in this Court's original screening order,  
13 these challenges are barred by *Heck v. Humphrey*, 512 U.S. 477 (1994). (See dkt. no. 8  
14 at 4-5.)

15 With respect to the motion for appointment of counsel, a litigant does not have a  
16 constitutional right to appointed counsel in 42 U.S.C. § 1983 civil rights claims. *Storseth*  
17 *v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). Pursuant to 28 U.S.C. § 1915(e)(1),  
18 “[t]he court may request an attorney to represent any person unable to afford counsel.”  
19 However, the court will appoint counsel for indigent civil litigants only in “exceptional  
20 circumstances.” *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009) (§ 1983 action).  
21 “When determining whether ‘exceptional circumstances’ exist, a court must consider  
22 ‘the likelihood of success on the merits as well as the ability of the petitioner to articulate  
23 his claims *pro se* in light of the complexity of the legal issues involved.” *Id.* “Neither of  
24 these considerations is dispositive and instead must be viewed together.” *Id.* In the  
25 instant case, the Court does not find exceptional circumstances that warrant the  
26 appointment of counsel. The Court denies the motion for appointment of counsel (dkt.  
27 no. 22).

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1 The Court gives Plaintiff one final opportunity to amend his complaint within thirty  
2 (30) days from the date of entry of this order. If Plaintiff fails to file an amended  
3 complaint about his conditions of confinement, this action shall be dismissed without  
4 prejudice. The Court will not grant any further extensions.

## 5 | II. CONCLUSION

For the foregoing reasons, it is ordered that the motion for appointment of  
counsel (dkt. no. 22) is denied.

8 It is further ordered that the motion for reconsideration (dkt. no. 23) is denied.

9 It is further ordered that the urgent motion for reconsideration (dkt. no. 26) is  
10 denied.

11 It is further ordered that Plaintiff shall file his amended complaint within thirty (30)  
12 days from the date of entry of this order in accordance with this Court's screening order  
13 (dkt. no. 8).

14 It is further ordered that if Plaintiff fails to file an amended complaint about his  
15 conditions of confinement within thirty (30) days from the date of entry of this order, this  
16 action shall be dismissed without prejudice.

17 It is further ordered that the Clerk of the Court shall send Plaintiff a copy of this  
18 Court's screening order (dkt. no. 8).

19 It is further ordered that the Court will not grant any further extensions for filing an  
20 amended complaint.

DATED THIS 26<sup>th</sup> day of March 2015.



MIRANDA M. DU  
UNITED STATES DISTRICT JUDGE